

**PART 3053—FORMS****Subpart 3053.1—General**

Sec.

3053.101 Requirements for use of forms.

3053.103 Exceptions.

**Subpart 3053.2—Prescription of Forms**

3053.204–70 Administrative matters.

3053.222–70 Application of labor laws to Government acquisitions.

3053.227–70 Conveyance of invention rights acquired by the Government.

3053.245–70 Contractor report of government property.

**Subpart 3053.3—Illustrations of Forms**

3053.303 Agency forms.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise note.

**Subpart 3053.1—General****3053.101 Requirements for use of forms.**

Unless excepted, forms prescribed in (FAR) 48 CFR part 53 and (HSAR) 48 CFR part 3053 are required for use by all OEs.

**3053.103 Exceptions.**

Requests for exceptions to forms contained in (FAR) 48 CFR part 53 and to DHS forms in (HSAR) 48 CFR part 3053 shall be submitted, as prescribed in (FAR) 48 CFR 53.103, to the CPO.

**Subpart 3053.2—Prescription of Forms****3053.204–70 Administrative matters.**

The following forms are prescribed for use in the closeout of applicable

contracts, as specified in (HSAR) 48 CFR 3004.804–570:

(a) DHS Form 0700–01, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804–570(a)(1).)

(b) DHS Form 0700–02, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.570(a)(2).)

(c) DHS Form 0700–03, Contractor Release. (See (HSAR) 48 CFR 3004.804–570(a)(3).)

**3053.222–70 Application of labor laws to Government acquisitions.**

The following form is prescribed for use in connection with the application of labor laws, as specified in (HSAR) 48 CFR 3022.406–9: DHS Form 0070–04, Employee's Claim for Wage Restitution.

**3053.227–70 Conveyance of invention rights acquired by the Government.**

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in (HSAR) 48 CFR 3027.305–4: DD Form 882, Report of Inventions and Subcontracts.

**3053.245–70 Report of Government property.**

The following form is prescribed for use by contractors to report Government property, as specified in (HSAR) 48 CFR 3045.505–14: DHS Form 0070–05, Contractor's Report of Government Property.

**Subpart 3053.3—Illustrations of Forms****3053.303 Agency forms.**

This section illustrates agency-specified forms. To access these forms go to: <http://www.dhs.gov/dhspublic/display?theme=37>.

Form name	Form No.
Cumulative Claim and Reconciliation Statement .....	DHS Form 0070–01
Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts .....	DHS Form 0070–02
Contractor Release .....	DHS Form 0070–03
Employee's Claim for Wage Restitution .....	DHS Form 0070–04
Contractor's Report of Government Property .....	DHS Form 0070–05
Report of Inventions and Subcontract .....	DD 882

# CHAPTER 34—DEPARTMENT OF EDUCATION ACQUISITION REGULATION

(Parts 3400 to 3499)

---

## SUBCHAPTER A—GENERAL

<i>Part</i>		<i>Page</i>
3401	ED Acquisition Regulation System .....	125
3402	Definitions of words and terms .....	126
3403	Improper business practices and personal conflicts of interest .....	126
3404	Administrative matters .....	127
3405	Publicizing contract actions .....	127

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

3408	Required sources of supplies and services .....	129
3409	Contractor qualifications .....	129
3410	Specification standards and other purchase de- scriptions .....	129

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

3413	Small purchase and other simplified purchase pro- cedures .....	131
3414	Sealed bidding .....	131
3415	Contracting by negotiation .....	131
3416	Types of contracts .....	132
3417	Special contracting methods .....	133

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

3419	Small business and small disadvantaged business concerns .....	134
3424	Protection of privacy and freedom of information .....	135
3425	Foreign acquisition .....	135

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

3427	Patents, data, and copyrights .....	137
3428	Bonds and insurance .....	137

**48 CFR Ch. 34 (10–1–05 Edition)**

<i>Part</i>		<i>Page</i>
3432	Contract financing .....	137
3433	Protests, disputes, and appeals .....	138
	SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING	
3437	Service contracting .....	140
	SUBCHAPTER G—CONTRACT MANAGEMENT	
3442	Contract administration .....	141
3443	Contract modifications .....	141
3445	Government property .....	141
3447	Transportation .....	142
	SUBCHAPTER H—CLAUSES AND FORMS	
3452	Solicitation provisions and contract clauses .....	143

## SUBCHAPTER A—GENERAL

### PART 3401—ED ACQUISITION REGULATION SYSTEM

Sec.

3401.000 Scope of part.

#### Subpart 3401.1—Purpose, Authority, Issuance

3401.103 Applicability.

3401.104 Issuance.

3401.104-2 Arrangement of regulations.

3401.104-3 Copies.

#### Subpart 3401.3—Agency Acquisition Regulations

3401.304 Agency control and compliance procedures.

#### Subpart 3401.4—Deviations

3401.401 Definition.

3401.403 Individual deviations.

3401.404 Class deviations.

#### Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501-2 Opportunity for public comments.

#### Subpart 3401.6—Contracting Authority and Responsibilities

3401.601 General.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19119, May 26, 1988, unless otherwise noted.

#### 3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Government. This part establishes a system of Department of Education (ED) acquisition regulations, referred to as the EDAR, for the codification and publication of policies and procedures of ED which implement and supplement the Federal Acquisition Regulation (FAR).

### Subpart 3401.1—Purpose, Authority, Issuance

#### 3401.103 Applicability.

The FAR and the EDAR apply to all acquisitions as defined in FAR part 2 except where expressly excluded.

#### 3401.104 Issuance.

#### 3401.104-2 Arrangement of regulations.

The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR (See FAR 1.104-2(c)).

#### 3401.104-3 Copies.

Copies of the EDAR in the FEDERAL REGISTER and Code of Federal Regulations (CFR) form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

### Subpart 3401.3—Agency Acquisition Regulations

#### 3401.304 Agency control and compliance procedures.

The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

### Subpart 3401.4—Deviations

#### 3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

#### 3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Head of the Contracting Activity (HCA).

#### 3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Procurement Executive.

## **3401.501**

### **Subpart 3401.5—Agency and Public Participation**

#### **3401.501 Solicitation of agency and public views.**

#### **3401.501-2 Opportunity for public comments.**

Unless the Secretary of Education (Secretary) approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553.

### **Subpart 3401.6—Contracting Authority and Responsibilities**

#### **3401.601 General.**

Contracting authority vests with the Secretary. The Secretary has delegated this authority to the Deputy Under Secretary for Management who has delegated this authority, with the right to redelegate, to the Procurement Executive and the HCA.

## **PART 3402—DEFINITIONS OF WORDS AND TERMS**

### **Subpart 3402.1—Definitions**

Sec.

3402.101 [Reserved]

#### **Subpart 3402.2—Definitions Clause**

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c), unless otherwise noted.

### **Subpart 3402.1—Definitions**

3402.101 [Reserved]

#### **Subpart 3402.2—Definitions Clause**

##### **3402.201 Contract clause.**

The contracting officer shall insert the clause in 3452.202-1, Definitions, in all solicitations and contracts in lieu of the clause in FAR 52.202-1, except—

(a) A fixed-price research and development contract that is expected to be \$2,500 or less; or

(b) A purchase order.

[53 FR 19119, May 26, 1988]

## **48 CFR Ch. 34 (10-1-05 Edition)**

## **PART 3403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

### **Subpart 3403.1—Safeguards**

Sec.

3403.101 Standards of conduct.

3403.101-3 Agency regulations.

#### **Subpart 3403.2—Contractor Gratuities To Government Personnel**

3403.203 Reporting suspected violations of the Gratuities clause.

#### **Subpart 3403.3—Reports of Suspected Antitrust Violations**

3403.301 General.

#### **Subpart 3403.4—Contingent Fees**

3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

#### **Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

3403.602 Exceptions.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c)

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

### **Subpart 3403.1—Safeguards**

3403.101 Standards of conduct.

3403.101-3 Agency regulations.

ED regulations on standards of conduct are in 34 CFR part 73.

#### **Subpart 3403.2—Contractor Gratuities to Government Personnel**

3403.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause must be reported to the HCA in writing detailing the circumstances.

(b) The HCA evaluates the report with the assistance of the Designated Agency Ethics Officer. If the HCA determines that a violation may have occurred, the HCA refers the report to the Procurement Executive for disposition.

## Department of Education

3405.270

### Subpart 3403.3—Reports of Suspected Antitrust Violations

#### 3403.301 General.

(a) [Reserved]

(b) Any Departmental personnel who have evidence of a suspected antitrust violation in an acquisition shall—

(1) Report that evidence through the HCA to the Office of the General Counsel for referral to the Attorney General; and

(2) Provide a copy of that evidence to the Procurement Executive.

### Subpart 3403.4—Contingent Fees

#### 3403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Any Departmental personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees, shall report the matter promptly in accordance with the procedures in 3403.203.

### Subpart 3403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

#### 3403.602 Exceptions.

Exceptions under FAR 3.602 must be approved by the Deputy Under Secretary for Management.

## PART 3404—ADMINISTRATIVE MATTERS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3404.1—Contract Execution

#### 3404.170 Ratification of unauthorized contract awards.

The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers acting in excess of the limits of their delegated authority, may be later ratified by the Depart-

ment. To be effective, a ratification must be—

(a) A written document clearly stating that ratification of a previously unauthorized act is intended; and

(b) Signed by the HCA, or higher level official of the Department, who could have granted authority to enter into the commitment at the time it was made and still has the power to do so.

[53 FR 19120, May 26, 1988]

## PART 3405—PUBLICIZING CONTRACT ACTIONS

### Subpart 3405.2—Synopses of Proposed Contract Actions

Sec.

3405.270 Notices to perform market surveys.

### Subpart 3405.5—Paid Advertisements

3405.502 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3405.2—Synopses of Proposed Contract Actions

#### 3405.270 Notices to perform market surveys.

(a) If a sole-source contract is anticipated, the issuance of a notice of a proposed contract action that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.

(b) The notice must include—

(1) A clear statement of the supplies or services to be procured;

(2) Any capabilities or experience required of a contractor and any other factors relevant to those requirements; and

(3) The criteria, including relative weights, to be used in the evaluation of responses.

[53 FR 19120, May 26, 1988]

**3405.502**

**48 CFR Ch. 34 (10-1-05 Edition)**

**Subpart 3405.5—Paid  
Advertisements**

**3405.502 Authority.**

Authority to approve publication of paid advertisements in newspapers is delegated to the HCA.

[53 FR 19120, May 26, 1988]

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 3408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

#### Subpart 3408.8—Acquisition of Printing and Related Supplies

##### 3408.870 Printing clause.

The contracting officer shall insert the clause in 3452.208-70, Printing, in all solicitations and contracts other than purchase orders.

[53 FR 19120, May 26, 1988]

### PART 3409—CONTRACTOR QUALIFICATIONS

#### Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 [Reserved]

3409.406 Debarment.

3409.406-3 Procedures.

#### Subpart 3409.5—Organizational Conflicts of Interest

3409.502 Applicability.

3409.503 Waiver.

3409.507 Procedures.

3409.570 Offeror certification provision.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c), unless otherwise noted.

SOURCE: 53 FR 19120, May 26, 1988, unless otherwise noted.

#### Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.403 [Reserved]

3409.406 Debarment.

3409.406-3 Procedures.

The debarring official may enter into a settlement with a contractor under which the contractor voluntarily excludes itself from, or restricts its participation in, Government contracting and subcontracting for a specified period.

### Subpart 3409.5—Organizational Conflicts of Interest

#### 3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

#### 3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

#### 3409.507 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED terminates the contract.

(b) The Procurement Executive is designated as the official to conduct reviews and make final decisions under FAR 9.507(c)(4).

#### 3409.570 Offeror certification provision.

The contracting officer shall insert the provision in 3452.209-70, Organizational Conflict of Interest, in all solicitations.

## PART 3410—SPECIFICATION STANDARDS AND OTHER PUR- CHASE DESCRIPTIONS

### Subpart 3410.7—Use of Metric System

Sec.

3410.701 Policy of the Department of Education with respect to use of the metric system.

3410.702 Definitions.

3410.703 Responsibilities of the Department of Education with respect to use of the metric system.

AUTHORITY: 15 U.S.C. 205b.



## **3410.701**

SOURCE: 58 FR 30088, May 25, 1993, unless otherwise noted.

### **Subpart 3410.7—Use of Metric System**

#### **3410.701 Policy of the Department of Education with respect to use of the metric system.**

It is the policy of the Department of Education to encourage use of the metric system in industry standards, consistent with the legal status of this system as the preferred system of weights and measures for United States trade and commerce.

#### **3410.702 Definitions.**

*Department* means the United States Department of Education.

*Metric system* (a) This term means the International System of Units established by the General Conference of Weights and Measures in 1960.

(b) The units are listed in Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government."

## **48 CFR Ch. 34 (10–1–05 Edition)**

#### **3410.703 Responsibilities of the Department of Education with respect to use of the metric system.**

(a) Consistent with the Federal Acquisition Regulation System, contracting officers of the Department shall—

(1) Accept, without prejudice, products and services dimensioned in metric units if they are offered at competitive prices and meet the needs of the Department; and

(2) Ensure that acquisition planning considers these products and services.

(b) Consistent with the policy in the Metric Conversion Act, as amended, and in 3410.701, if the metric system is the accepted system of weights and measures in a particular industry, the Department ensures that solicitations include specifications and purchase descriptions stated in metric units of measurement.

(c) If the metric system is not the accepted system of weights and measures in a particular industry, the Department ensures that solicitations for procurements in excess of the small purchase threshold permit offerors to propose products or services in metric units of measurement, except when to do this would be detrimental to the purpose of the affected program.

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 3413—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

#### Subpart 3413.1—General

##### 3413.107 Solicitation and evaluation of quotations.

(a)–(c) [Reserved]

(d) *Information provided by ED.* If ED provides information to a potential quoter concerning a request for quotations, that information must also be provided to all other potential quoters, by amending the request, if—

(1) The information is necessary to quoters in submitting quotations; or

(2) The lack of the information would be otherwise prejudicial to other potential quoters.

(e) *Late quotations.* The procedures in FAR 15.412 must be used for quotations received after the time specified for receipt at the contracting activity, except that late quotations may be accepted if the contracting officer determines in writing prior to the award that it is in the best interest of the Government to do so.

[53 FR 19121, May 26, 1988]

### PART 3414—SEALED BIDDING

#### Subpart 3414.4—Opening of Bids and Award of Contract

Sec.

3414.406 Mistakes in bids.

3414.406–3 Other mistakes disclosed before award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

#### Subpart 3414.4—Opening of Bids and Award of Contract

##### 3414.406 Mistakes in bids.

##### 3414.406–3 Other mistakes disclosed before award.

(a)–(d) [Reserved]

(e) Authority is delegated to the HCA to make determinations under FAR 14.406–3 (a) through (d).

[53 FR 19121, May 26, 1988]

### PART 3415—CONTRACTING BY NEGOTIATION

#### Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

Sec.

3415.406–3 Part II—Contract clauses.

3415.407 Solicitation provisions.

3415.413–2 Alternate II.

#### Subpart 3415.5—Unsolicited Proposals

3415.505 Content of unsolicited proposals.

3415.506 Agency procedures.

#### Subpart 3415.9—Profit

3415.902 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

#### Subpart 3415.4—Solicitation and Receipt of Proposals and Quotations

##### 3415.406–3 Part II—Contract clauses.

The contracting officer shall insert the clause in 3452.215–33, Order of Precedence, in all contracts other than purchase orders. The contracting officer shall use this clause in lieu of the clause in FAR 52.215–33.

##### 3415.407 Solicitation provisions.

(a) The Freedom of Information Act (FOIA), 5 U.S.C. 552, may require ED to release data contained in an offeror's proposal even if the offeror has identified the data as restricted in accordance with the provision in FAR 52.215–12. The solicitation provision in 3452.215–70, Release of Restricted Data, informs offerors that ED is required to consider release of restricted data under FOIA and Executive Order 12600.

(b) The contracting officer shall insert the provision in 3452.215–70, in all solicitations that include a reference

## **3415.413-2**

to FAR 52.215-12, Restriction on Disclosure and Use of Data.

### **3415.413-2 Alternate II.**

The Department uses the Alternate II procedures in FAR 15.413-2.

### **Subpart 3415.5—Unsolicited Proposals**

#### **3415.505 Content of unsolicited proposals.**

(a)–(c) [Reserved]

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY  
OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.504.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: \_\_\_\_\_

Organization: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(This certification must be signed by a responsible person authorized to enter into contracts on behalf of the organization)

#### **3415.506 Agency procedures.**

(a) [Reserved]

(b)(1) The HCA is the contact point to coordinate the receipt and handling of unsolicited proposals.

(2) Offerors shall direct unsolicited proposals to the HCA.

### **Subpart 3415.9—Profit**

#### **3415.902 Policy.**

(a) [Reserved]

(b) The contracting officer shall establish the profit or fee portion of the Government prenegotiation objective in accordance with 48 CFR chapter 3, part 315, subpart 315.9 (Department of Health and Human Services Acquisition Regulation).

## **48 CFR Ch. 34 (10-1-05 Edition)**

## **PART 3416—TYPES OF CONTRACTS**

### **Subpart 3416.3—Cost-Reimbursement Contracts**

Sec.

3416.303 Cost-sharing contracts.

3416.307 Contract clauses.

### **Subpart 3416.6—Time-and-Materials, Labor-Hour and Letter Contracts**

3416.603 Letter contracts.

3416.603-3 Limitations.

### **Subpart 3416.7—Agreements**

3416.701 Contract clause.

3416.702 Basic agreements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19121, May 26, 1988, unless otherwise noted.

### **Subpart 3416.3—Cost-Reimbursement Contracts**

#### **3416.303 Cost-sharing contracts.**

(a) [Reserved]

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract may not be charged to the Government under any other grant, contract, cooperative agreement, or other arrangement.

#### **3416.307 Contract clauses.**

(a) If the clause in FAR 52.216-7, Allowable cost and Payment, is used in a contract with a hospital, the contracting officer shall modify the clause by deleting the words “subpart 31.2 of the Federal Acquisition Regulation (FAR)” from paragraph (a) and substituting “34 CFR part 74, appendix E.”

(b) The contracting officer shall insert the clause in 3452.216-70, Additional Cost Principles, in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutional, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A-122.

## Department of Education

3417.207

### Subpart 3416.6—Time-and-Materials, Labor-Hour and Letter Contracts

#### 3416.603 Letter contracts.

##### 3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the Procurement Executive executes the written determination under FAR 16.603-3.

### Subpart 3416.7—Agreements

#### 3416.701 Contract clause.

The contracting officer shall insert the clause in 3452.216-71, Negotiated Overhead Rates—Fixed, in contracts with organizations that have fixed indirect cost rates with carryforward adjustments approved by the Government agency responsible for negotiating the organization's indirect cost rates.

#### 3416.702 Basic agreements.

(a)–(d) [Reserved]

(e) *Negotiated overhead rates.* Basic agreements may include negotiated overhead rates for cost-reimbursement

contracts. If a negotiated overhead rate is included, the bases to which the rate applies and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs must also be included.

## PART 3417—SPECIAL CONTRACTING METHODS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3417.2—Options

#### 3417.207 Exercise of options.

If any provision in a contract requires that an option may only be exercised within a specified time after funds become available, the same provision must specify that the date on which funds are available means the date funds become available to the contracting officer for obligation.

[53 FR 19122, May 26, 1988]

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

### PART 3419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

#### Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3419.705-2 Determining the need for a subcontracting plan.

3419.708 Solicitation provisions and contract clauses.

#### Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

3419.801 General.

3419.870 Acquisition of technical requirements.

AUTHORITY: 5 U.S.C.; 40 U.S.C. 486(c).

SOURCE: 53 FR 19122, May 26, 1988, unless otherwise noted.

#### Subpart 3419.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

**3419.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

**3419.705-2 Determining the need for a subcontracting plan.**

Incremental funding actions must be included in determining whether an acquisition meets the dollar threshold requiring a subcontracting plan.

**3419.708 Solicitation provisions and contract clauses.**

(a) [Reserved]

(b) If the clause “Small Business and Small Disadvantaged Business Subcontracting Plan” (see FAR 52.219-9) must be used in a solicitation, a notification must be included in the solicitation that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

#### Subpart 3419.8—Contracting With the Small Business Administration (The 8(a) Program)

**3419.801 General.**

The signing of a contract document by the Small Business Administration (SBA) may be accepted by the contracting officer as the certification under FAR 19.801(b)(1).

**3419.870 Acquisition of technical requirements.**

(a) *Source selection.* (1) Except where SBA selects a concern for an award under section 8(a) or under the circumstances in paragraph (a)(5) of this section, ED selects a nominee for an 8(a) award by SBA through a limited technical competition if technical aspects, methodology, or approach are of primary importance rather than price.

(2) If limited technical competition is used, the concerns to be included are decided by the contracting officer in consultation with OSDBU and the Contracting Officer’s Technical Representative (COTR).

(3)(i) ED may require the concerns participating in the limited technical competition to submit written technical proposals. Otherwise, ED holds oral discussions with the participating concerns.

(ii) In a limited technical competition, cost factors may not be included in the technical proposals nor considered during technical discussions of the proposals.

(4) ED evaluates the concerns participating in a limited technical competition based on the written technical proposals or oral discussions. ED nominates, to SBA for subcontract award, the concern that the contracting officer determines to have the best technical capability to perform the contract requirements.

(5) Instead of selecting a nominee through limited technical competition, ED may nominate one 8(a) concern to SBA if that concern has exclusive or predominant capability among 8(a)

## Department of Education

3425.102

concerns by reason of experience, specialized facilities, or technical competence to perform the work within the time required.

(6) Each concern nominated for a specific 8(a) requirement must be approved by OSDBU or SBA for that particular requirement before the contracting officer initiates negotiation of 8(a) award terms with the concern.

(b) *Negotiation of 8(a) award.* The contracting officer shall give all possible assistance required by SBA with respect to SBA's negotiation of an 8(a) award.

(c) *Delegated 8(a) award administration.* If SBA delegates responsibility to ED for administration of the 8(a) award, ED informs SBA of all 8(a) award modifications, progress payments, problems experienced by the subcontractor, and other pertinent matters requested by SBA.

## PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 3424.1—Protection of Individual Privacy

Sec.  
3424.103 Procedures.

### Subpart 3424.2—Freedom of Information Act

3424.201 Authority.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3424.1—Protection of Individual Privacy

#### 3424.103 Procedures.

(a) If the Privacy Act of 1974 applies to a contract, the contracting officer shall specify in the contract the disposition to be made of the system or systems of records upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(b) If a notice of the system of records has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the acquisition but shall not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

[53 FR 19123, May 26, 1988]

## Subpart 3424.2—Freedom of Information Act

#### 3424.201 Authority.

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

[53 FR 19123, May 26, 1988]

## PART 3425—FOREIGN ACQUISITION

### Subpart 3425.1—Buy American Act—Supplies

Sec.  
3425.102 Policy.

### Subpart 3425.3—Balance of Payments Program

3425.302 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3425.1—Buy American Act—Supplies

#### 3425.102 Policy.

(a) [Reserved]

(b) The HCA approves determinations under FAR 25.120(a)(4).

[53 FR 19123, May 26, 1988]

**3425.302**

**48 CFR Ch. 34 (10–1–05 Edition)**

**Subpart 3425.3—Balance of  
Payments Program**

**3425.302 Policy.**

The HCA is designated to make all determinations under FAR 25.302. This authority may not be redelegated.

[53 FR 19123, May 26, 1988]

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 3427—PATENTS, DATA, AND COPYRIGHTS

#### Subpart 3427.4—Rights in Data and Copyrights

Sec.

- 3427.470 Publication and publicity clause.
- 3427.471 Paperwork Reduction Act clause.
- 3427.472 Advertising of awards clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

#### Subpart 3427.4—Rights in Data and Copyrights

##### 3427.470 Publication and publicity clause.

The contracting officer shall insert the clause in 3452.227–70, Publication and Publicity, in all solicitations and contracts other than purchase orders.

##### 3427.471 Paperwork Reduction Act clause.

The contracting officer shall insert the clause in 3452.227–71, Paperwork Reduction Act, in all solicitations and contracts.

##### 3427.472 Advertising of awards clause.

The contracting officer shall insert the clause in 3452.227–72, Advertising of Awards, in all solicitations and contracts other than purchase orders.

### PART 3428—BONDS AND INSURANCE

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

#### Subpart 3428.3—Insurance

##### 3428.370 Contract clause.

The contracting officer shall insert the clause in 3452.228–70, Required Insurance, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19123, May 26, 1988]

### PART 3432—CONTRACT FINANCING

#### Subpart 3432.1—General

Sec.

- 3432.170 Method of payment.

#### Subpart 3432.4—Advance Payments

- 3432.402 General.
- 3432.407 Interest.

#### Subpart 3432.7—Contract Funding

- 3432.704 Limitation of cost or funds.
- 3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.
- 3432.771 Provision for incremental funding.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(C).

SOURCE: 53 FR 19123, May 26, 1988, unless otherwise noted.

#### Subpart 3432.1—General

##### 3432.170 Method of payment.

The contracting officer shall insert the clause in 3452.232–72, Method of Payment, in all solicitations and contracts.

#### Subpart 3432.4—Advance Payments

##### 3432.402 General.

- (a)–(d) [Reserved]
- (e) The HCA is designated to make determinations under FAR 32.402(c)(1)(iii)(A). This authority may not be redelegated.

##### 3432.407 Interest.

The HCA is designated to authorize advance payments without interest under FAR 32.407(d).

#### Subpart 3432.7—Contract Funding

##### 3432.704 Limitation of cost or funds.

- (a) Under the circumstances in FAR 32.704(a)(1), the contractor shall submit the following information in writing to the contracting officer:

- (1) Name and address of the contractor.



## 3432.770

(2) Contract number and expiration date.

(3) Contract items and amounts that will exceed the estimated cost of the contract or the limit of the funds allotted.

(4) The elements of cost that changed from the original estimate (for example: labor, material, travel, overhead), furnished in the following format:

- (i) Original estimate.
- (ii) Costs incurred to date.
- (iii) Estimated cost to completion.
- (iv) Revised estimate.
- (v) Amount of adjustment.

(5) The factors responsible for the increase, such as error in estimate or changed conditions.

(6) The latest date by which funds must be available to the contractor to avoid delays in performance, work stoppage, or other impairments.

(b) A fixed fee provided in a contract may not be changed if a cost overrun is funded. Changes in a fixed fee may be made only to reflect changes in the scope of work that justify an increase or decrease in the fee.

### **3432.770 Prohibition against the use of ED funds to influence legislation or appropriations.**

The contracting officer shall insert the clause at 3452.232-70, Prohibition Against the Use of ED Funds to Influence Legislation or Appropriations, in contracts with educational institutions, hospitals, and State and local governments. Contracts with commercial and nonprofit organizations shall be subject to the legislative lobbying prohibitions contained in FAR 31.205-22 and Office of Management and Budget Circular A-122, respectively.

### **3432.771 Provision for incremental funding.**

The contracting officer shall insert the provision in 3452.232-71, Incremental Funding, in a solicitation if a cost-reimbursement contract using incremental funding is contemplated.

## **PART 3433—PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 3433.1—Protests**

Sec.

3433.101 Definitions.

## **48 CFR Ch. 34 (10-1-05 Edition)**

3433.103 Protests to the agency.

### **Subpart 3433.2—Disputes and Appeals**

3433.203 Applicability.

3433.212 Contracting officer's duties upon appeal.

3433.214 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

### **Subpart 3433.1—Protests**

#### **3433.101 Definitions.**

*Filed*, as used in this subpart, means that a document has been received by the contracting officer, the General Accounting Office (GAO), or the General Services Administration Board of Contract Appeals (GSBCA).

#### **3433.103 Protests to the agency.**

(a)(1) Protests to ED based on alleged improprieties in any type of solicitation that are apparent before bid opening or the closing date for receipt of proposals, must be filed before bid opening or the closing date for receipt of proposals. In the case of negotiated acquisitions, protests based on alleged improprieties that do not exist in the initial solicitation, but that are added later, must be filed not later than the next closing date for receipt of proposals following the addition. In other cases, protests to ED must be filed not later than ten (10) Federal Government working days after a basis for protest is known or should have been known, whichever is earlier.

(b) With the concurrence of the HCA, the contracting officer is authorized to make a determination, using the criteria in FAR 33.103(a), to award a contract before resolution of a protest.

### **Subpart 3433.2—Disputes and Appeals**

#### **3433.203 Applicability.**

The General Services Administration Board of Contract Appeals (GSBCA) is designated to hear any appeal from a final decision of a contracting officer issued pursuant to the "Disputes" clause in a contract. The rules and regulations of the GSBCA are in 48 CFR

**Department of Education**

**3433.214**

chapter 5, appendix B, and govern the processing of these appeals.

in the defense of appeals before the GSBCA.

**3433.212 Contracting officer's duties upon appeal.**

**3433.214 Contract clause.**

The Office of the General Counsel is designated as the Government Trial Attorney to represent the Government

The contracting officer shall use the clause in FAR 52.233-1, Disputes, with its Alternate I.

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

### PART 3437—SERVICE CONTRACTING

#### Subpart 3437.1—Service Contracts— General

Sec.  
3437.102 Policy.

#### Subpart 3437.2—Consulting Services

3437.270 Consulting services reporting  
clause.

3437.271 Services of consultants clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless  
otherwise noted.

#### Subpart 3437.1—Service Contracts—General

##### 3437.102 Policy.

If a service contract requires one or  
more end items of supply, FAR subpart

37.1 and this subpart apply only to the  
required services.

#### Subpart 3437.2—Consulting Services

##### 3437.270 Consulting services reporting clause.

The contracting officer shall include  
the clause in 3452.237–70, Identification  
of Reports Under Consulting Services  
Contracts, in all solicitations and con-  
tracts for consulting services.

##### 3437.271 Services of consultants clause.

The contracting officer shall insert  
the clause in 3452.237–71, Services of  
Consultants, in all solicitations and re-  
sultant cost-reimbursement contracts.

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 3442—CONTRACT ADMINISTRATION

#### Subpart 3442.7—Indirect Cost Rates

Sec.

3442.705 Final indirect cost rates.

#### Subpart 3442.70—Contract Monitoring

3442.7001 Withholding of contract payments clause.

3442.7002 Litigation and claims clause.

3442.7003 Delays clause.

#### Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

3442.7101 Policy and clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19124, May 26, 1988, unless otherwise noted.

#### Subpart 3442.7—Indirect Cost Rates

##### 3442.705 Final indirect cost rates.

The Chief, Cost Determination Branch, Grants and Contracts Service, is delegated the authority to establish final indirect cost rates under FAR 42.705-1 and 42.705-2.

#### Subpart 3442.70—Contract Monitoring

##### 3442.7001 Withholding of contract payments clause.

(a) The contracting officer shall insert the clause in 3452.242-72, Withholding of Contract Payments, in all solicitations and contracts other than purchase orders.

(b) ED may withhold contract payments if any report required to be submitted by the contractor is overdue, or if the contractor fails to perform or deliver work or services as required by the contract.

(c) The contracting officer shall notify the contractor in writing that payments are being withheld in accordance with the clause.

##### 3442.7002 Litigation and claims clause.

The contracting officer shall insert the clause in 3452.242-70, Litigation and Claims, in all solicitations and resultant cost-reimbursement contracts.

##### 3442.7003 Delays clause.

The contracting officer shall insert the clause in 3452.242-71, Notice to the Government of Delays, in all solicitations and contracts other than purchase orders.

#### Subpart 3442.71—Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities

##### 3442.7101 Policy and clause.

(a) It is the policy of ED that all meetings, conferences, and seminars be accessible to persons with disabilities.

(b) The contracting officer shall insert the clause in 3452.242-73, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, in all solicitations and contracts.

### PART 3443—CONTRACT MODIFICATIONS

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

#### 3443.106 Contract clause.

The contracting officer shall insert the clause in 3452.243-70, Key Personnel, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19125, May 26, 1988]

### PART 3445—GOVERNMENT PROPERTY

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

**3445.405**

**Subpart 3445.4—Contractor Use  
and Rental of Government  
Property**

**3445.405 Contracts with foreign gov-  
ernments or international organiza-  
tions.**

Requests by, or for the benefit of, foreign governments or international organizations to use ED production and research property must be approved by the HCA. The HCA shall determine the amount of cost to be recovered or rental charged, if any, based on the facts and circumstances of each case.

[53 FR 19125, May 26, 1988]

**48 CFR Ch. 34 (10–1–05 Edition)**

**PART 3447—TRANSPORTATION**

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

**Subpart 3447.70—Foreign Travel**

**3447.7000 Foreign travel clause.**

The contracting officer shall insert the clause in 3452.247–70, Foreign Travel, in all solicitations and resultant cost-reimbursement contracts.

[53 FR 19125, May 26, 1988]

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 3452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### Subpart 3452.2—Texts of Provisions and Clauses

- Sec.  
3452.202-1 Definitions.  
3452.208-70 Printing.  
3452.209-70 Organizational conflict of interest.  
3452.215-33 Order of precedence.  
3452.215-70 Release of restricted data.  
3452.216-70 Additional cost principles.  
3452.216-71 Negotiated overhead rates—fixed.  
3452.227-70 Publication and publicity.  
3452.227-71 Paperwork Reduction Act.  
3452.227-72 Advertising of awards.  
3452.228-70 Required insurance.  
3452.232-70 Prohibition against the use of ED funds to influence legislation or appropriations.  
3452.232-71 Incremental funding.  
3452.232-72 Method of payment.  
3452.237-70 Identification of reports under consulting services contracts.  
3452.237-71 Services of consultants.  
3452.242-70 Litigation and claims.  
3452.242-71 Notice to the Government of delays.  
3452.242-72 Withholding of contract payments.  
3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.  
3452.243-70 Key personnel.  
3452.247-70 Foreign travel.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 53 FR 19125, May 26, 1988, unless otherwise noted.

#### Subpart 3452.2—Texts of Provisions and Clauses

##### 3452.202-1 Definitions.

As prescribed in 3402.201, insert the following clause in solicitations and contracts:

##### DEFINITIONS (AUG 1987)

(a) The term *Secretary* or *Head of the Agency* (also called *Agency Head*) means the Secretary or Under Secretary of the Department of Education; and the term *his/her duly authorized representative* means any person, persons, or board authorized to act for these officials.

(b) The term *contracting officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

(c) The term *Contracting Officer's Technical Representative* means the person representing the Government for the purpose of technical monitoring of contract performance. The Contracting Officer's Technical Representative (COTR) is not authorized to issue any instructions or directions which effect any increases or decreases in the scope of work or which would result in the increase or decrease of the cost or price of this contract or a change in the delivery dates or performance period of this contract.

(d) The term *Department* or *ED* means the Department of Education.

(e) Except as otherwise provided in this contract, the term *subcontract* includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

##### 3452.208-70 Printing.

As prescribed in 3408.870, insert the following clause in all solicitations and contracts other than purchase orders:

##### PRINTING (AUG 1987)

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, and printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract; except that performance involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, shall not be deemed to be printing. A production unit is defined as one sheet, size 8½ by 11 inches, and one side and color only.

(End of clause)

##### 3452.209-70 Organizational conflict of interest.

As prescribed in 3409.570, insert the following provision in all certifications:

### 3452.215-33

#### ORGANIZATIONAL CONFLICT OF INTEREST (OCT 1987)

The offeror certifies that it ( ) is ( ) is not aware of any potential organization conflict of interest that it may have under this procurement. If the offeror is aware of any potential conflict of interest, the offeror shall submit a disclosure statement fully describing the situation. An organizational conflict of interest is as defined and illustrated in FAR 9.5.

(End of provision)

### 3452.215-33 Order of precedence.

As prescribed in 3415.406-3, insert the following clause in contracts:

#### ORDER OF PRECEDENCE (AUG 1987)

Any inconsistency in this contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the work statement or specification).
- (b) The contract clauses (Section I).
- (c) Any incorporated documents, exhibits, or attachment, excluding the work statement or specifications and the contractor's proposal, representations, and certifications.
- (d) The work statement or specifications, and
- (e) The contractor's proposal, as amended, including representations and certifications.

(End of clause)

### 3452.215-70 Release of restricted data.

As prescribed in 3415.407, insert the following provision in solicitations:

#### RELEASE OF RESTRICTED DATA (AUG 1987)

(a) Offerors are hereby put on notice that regardless of their use of the legend set forth in FAR 52.215-12, *Restriction on Disclosure and Use of Data*, the Government may be required to release certain data contained in the proposal in response to a request for the data under the Freedom of Information Act. the Government's determination to withhold or disclose a record will be based upon the particular circumstance involving the data in question and whether the data may be exempted from disclosure under the Freedom of Information Act. In accordance with Executive Order 12600 and to the extent permitted by law, the Government will notify the offeror before it releases restricted data.

(b) By submitting a proposal or quotation in response to this solicitation:

(1) The offeror acknowledges that the Department may not be able to withhold nor deny access to data requested pursuant to the Act and that the Government's FOI officials shall make that determination;

### 48 CFR Ch. 34 (10-1-05 Edition)

(2) The offeror agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act;

(3) The offeror acknowledges that proposals not resulting in a contract remain subject to the Act; and

(4) The offeror agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any propose, including the release of the information pursuant to requests under the Act.

(c) Offerors are cautioned that the Government reserves the right to reject any proposal submitted with (1) a restrictive legend or statement differing in substance from the one required by the solicitation provision in FAR 52.515-12, *Restriction on Disclosure and Use of Data*, or (2) a statement taking exceptions to the terms of (a) or (b) of this provision.

(End of provision)

### 3452.216-70 Additional cost principles.

Insert the following clause in solicitations and contracts as prescribed in 3416.307(b):

#### ADDITIONAL COST PRINCIPLES (AUG 1987)

(a) *Bid and Proposal Costs.* Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for potential Federal and non-Federal grants, contracts, and other agreements, including the development of scientific, cost and other data needed to support the bids, proposals and applications. Bid and proposal costs of the current accounting period are allowable as indirect costs; bid and proposal costs of past accounting periods are unallowable as costs of the current period. However, if the organization's established practice is to treat these costs by some other method, they may be accepted if they are found to be reasonable and equitable. Bid and proposal costs do not include independent research and development costs or pre-award costs.

(b) *Independent research and development costs.* Independent research and development is research and development that is not sponsored by Federal and non-Federal grants, contracts, or other agreements. Independent research and development shall be allocated its proportionate share of indirect costs on the same basic as the allocation of indirect costs of sponsored research and development. The costs of independent research and development, including its proportionate share of indirect costs, are unallowable.

## Department of Education

3452.227-70

(End of clause)

### 3452.216-71 Negotiated overhead rates—fixed.

Insert the following clause in cost-reimbursement contracts as prescribed in 3416.701:

#### NEGOTIATED OVERHEAD RATES—FIXED (AUG 1987)

(a) Notwithstanding the provisions of the clause entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties, as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. If the application of the negotiated fixed rates(s) against the actual bases during a given fiscal period produces an amount greater or less than the indirect costs determined for that period, the greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The contractor, as soon as possible but no later than six months after the close of its fiscal year, or such other period as may be specified in the contract, shall submit to the contracting officer or the duly authorized representative, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carry-forward adjustments, if any, by the contractor and the contracting officer, or the duly authorized representative, shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the contracting officer, subject to appropriate adjustment

when the final rates for the fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed rate or rates or to the amount of any carry-forward adjustment under this clause shall not be considered a dispute for decision by the contracting officer within the meaning of the Disputes clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates, in accordance with the terms of the Allowable Cost and Payment clause, in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the contracting officer or the duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the contractor and the contracting officer or the duly authorized representative, as evidenced by negotiated overhead rate agreements signed by both parties, shall satisfy the requirements of paragraphs (b), (c), (d), and (e) of this clause.

(End of clause)

### 3452.227-70 Publication and publicity.

As prescribed in 3427.470, insert the following clause in all solicitations and contracts other than purchase orders:

#### PUBLICATION AND PUBLICITY (AUG 1987)

(a) Unless otherwise specified in this contract, the contractor is encouraged to publish and otherwise promote the results of its work under this contract. A copy of each article or work submitted by the contractor for publication shall be promptly sent to the Contracting Officer's Technical Representative. The contractor shall also inform the representative when the article or work is published and furnish a copy in the published form.

(b) The contractor shall acknowledge the support of the Department of Education in publicizing the work under this contract in any medium. This acknowledgment shall read substantially as follows:

"This project has been funded at least in part with Federal funds from the U.S. Department of Education under contract number \_\_\_\_\_. The content of this publication does not necessarily reflect the views or policies of the U.S. Department of Education nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."



**3452.227-71**

(End of clause)

**3452.227-71 Paperwork Reduction Act.**

As prescribed in 3427.471, insert the following clause in all solicitations and contracts:

**PAPERWORK REDUCTION ACT (AUG 1987)**

(a) The Paperwork Reduction Act of 1980 (Pub. L. 96-511) applies to contractors that collect information for use or disclosure by the Federal Government.

If the contractor will collect information requiring answers to identical questions from 10 or more people then no plan, questionnaire, interview guide, or other similar device for collecting information may be used without first obtaining clearance from the Deputy Under Secretary for Management (DUSM) or his/her delegate within the Department of Education (ED) and the Office of Management and Budget (OMB). Contractors and Contracting Officers' Technical Representatives shall be guided by the provisions of 5 CFR part 1320, Controlling Paperwork Burdens on the Public, and seek the advice of the Department's Paperwork Clearance Officer to determine the procedures for acquiring DUSM and OMB clearance.

(b) The contractor shall obtain the required DUSM and OMB clearance through the Contracting Officer's Technical Representative before expending any funds or making public contacts for the collection of information described in paragraph (a) of this clause. The authority to expend funds and proceed with the collection shall be in writing by the contracting officer. The contractor must plan at least 120 days for DUSM and OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the Excusable Delays or Default clause of this contract.

(End of clause)

**3452.227-72 Advertising of awards.**

As prescribed in 3427.472, insert the following clause in all solicitations and contracts other than purchase orders:

**ADVERTISING OF AWARDS (AUG 1987)**

The contractor agrees not to refer to awards issued by the Department of Education in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed by the Federal Government or is necessarily considered by the Government to be superior to other products or services.

**48 CFR Ch. 34 (10-1-05 Edition)**

(End of clause)

**3452.228-70 Required insurance.**

As prescribed in 3428.370, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

**REQUIRED INSURANCE (AUG 1987)**

(a) The contractor shall procure and maintain such insurance as required by law or regulation, including but not limited to the requirements of FAR subpart 28.3 or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

(End of clause)

**3452.232-70 Prohibition against the use of ED funds to influence legislation or appropriations.**

The following clause is to be used in accordance with 3432.770:

**PROHIBITION AGAINST THE USE OF ED FUNDS TO INFLUENCE LEGISLATION OR APPROPRIATIONS (APR 1987)**

No part of any funds under this contract shall be used to pay the salary and expenses of any contractor, or agency acting for the contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

(End of clause)

**3452.232-71 Incremental funding.**

As prescribed in 3452.771, insert the following provision in solicitations:

**INCREMENTAL FUNDING (AUG 1987)**

(a) Sufficient funds are not presently available to cover the total cost of the complete project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause titled "Limitation of Funds" in FAR 52.232-22. Under that clause, which will be included in the resultant contract, initial

## Department of Education

3452.237-71

funds will be obligated under the contract to cover an estimated base performance period. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the entire period of performance. This intent notwithstanding, the Government will not be obligated to reimburse the contractor for cost incurred in excess of the periodic allotments, nor will the contractor be obligated to perform in excess of the amount allotted.

(b) The Limitation of Cost clause in FAR 52.232-20 shall supersede the Limitation of Funds clause in the event the contract becomes fully funded.

(End of provision)

### 3452.232-72 Method of payment.

As prescribed in 3432.170, insert the following clause in all solicitations and contracts:

#### METHOD OF PAYMENT (AUG 1987)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The contractor shall forward the following information in writing to (designated payment party) not later than seven days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) to whom check payments are to be sent, and who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution:

(ii) Receiving financial institution's nine-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide the address and telegraphic abbreviation of that institution and its nine-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this clause

shall be furnished to (designated payment office) in writing at least 30 days before the effective date of the change. It is the contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the contractor's official authorized to provide it, as well as the contractor's name and contract number.

(End of clause)

### 3452.237-70 Identification of reports under consulting services contracts.

As prescribed in 3437.270, insert the following clause in all solicitations and contracts for consulting services:

#### IDENTIFICATION OF REPORTS UNDER CONSULTING SERVICE CONTRACTS (AUG 1987)

The contractor shall set forth on the cover of every report submitted pursuant to this contract the following information:

(a) Name and business address of the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was competitively or noncompetitively awarded; (e) name of the Contracting Officer's Technical Representative and complete office identification and address; and (f) names of the managerial and professional personnel responsible for the content and preparation of the report.

(End of clause)

### 3452.237-71 Services of consultants.

As prescribed in 3437.271, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

#### SERVICES OF CONSULTANTS (AUG 1987)

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of the contract entitled "Subcontracts Under Cost-Reimbursement and Letter Contracts," the prior written approval of the contracting officer shall be required:

(a) If any employee of the contractor is to be paid as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, \$150, exclusive of travel costs, or if the services of any consultant under this contract will exceed 10 days in any calendar year.

**3452.242-70**

If that contracting officer's approval is required, the contractor shall obtain and furnish to the contracting officer information concerning the need for the consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by consultant to others for performing consultant services of a similar nature.

(End of clause)

**3452.242-70 Litigation and claims.**

As prescribed in 3442.7002, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

**LITIGATION AND CLAIMS (AUG 1987)**

(a) The contractor shall give the contracting officer immediate notice in writing of:

(1) Any action, filed against the contractor arising out of the performance of this contract, including any proceeding before any administrative agency or court of law, and also including, but not limited to, the performance of any subcontract hereunder; and

(2) Any claim against the contractor for a cost which is allowable under the clause entitled "Allowable Cost and Payment."

(b) Except as otherwise directed by the contracting officer, the contractor shall immediately furnish the contracting officer copies of all pertinent papers received under that action or claim.

(c) If required by the contracting officer, the contractor shall:

(1) Effect an assignment and subrogation in favor of the Government of all the contractor's rights and claim (except those against the Government) arising out of the action or claim against the contractor; and

(2) Authorize the Government to settle or defend the action or claim and to represent the contractor in, or to take charge of, the action.

(d) If the settlement or defense of an action or claim is undertaken by the Government, the contractor shall furnish all reasonable required assistance. However, if an action against the contractor is not covered by a policy of insurance, the contractor shall notify the contracting officer and proceed with the defense of the action in good faith.

(e) To the extent not in conflict with any applicable policy of insurance, the contractor may, with the contracting officer's approval, settle any such action or claim.

(f)(1) The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the contractor would have been compensated by insurance that was required by law, regulation, contract clause, or

**48 CFR Ch. 34 (10-1-05 Edition)**

other written direction of the contracting officer, but which the contractor failed to secure through its own fault or negligence.

(2) In any event, unless otherwise expressly provided in this contract, the contractor shall not be reimbursed or indemnified by the Government for any cost or expense of liability that the contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may arise from the performance of this contract.

(End of clause)

**3452.242-71 Notice to the Government of delays.**

As prescribed in 3442.7003, insert the following clause in all solicitations and contracts other than purchase orders:

**NOTICE TO THE GOVERNMENT OF DELAYS (AUG 1987)**

Whenever the contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the contracting officer.

(End of clause)

**3452.242-72 Withholding of contract payments.**

As prescribed in 3442.7001, insert the following clause in all solicitations and contracts other than purchase orders:

**WITHHOLDING OF CONTRACT PAYMENTS (AUG 1987)**

Notwithstanding any other payment provisions of this contract, failure of the contractor to submit required reports when due or failure to perform or deliver required work, supplies, or services, or failure to meet any of the requirements of the contract, will result in the withholding of payments under this contract in such amounts as the contracting officer deems appropriate, unless the failure arises out of causes beyond the control, and without the fault of negligence, of the contractor, as defined by the clause entitled "Excusable Delays" or "Default", as applicable. The Government shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted. Payment will be withheld until the failure is cured, a new delivery schedule is agreed upon, or payment is made as part of a termination settlement.

## Department of Education

3452.247-70

(End of clause)

### **3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.**

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (AUG 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

### **3452.243-70 Key personnel.**

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

KEY PERSONNEL (AUG 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified indi-

viduals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided*, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

### **3452.247-70 Foreign travel.**

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (AUG 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, "foreign travel" means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)